

1 Michele R. Stafford, Esq. (SBN 172509)  
George R. Nemiroff, Esq. (SBN 262058)  
2 SALTZMAN & JOHNSON LAW CORPORATION  
44 Montgomery Street, Suite 2110  
3 San Francisco, CA 94104  
(415) 882-7900  
4 (415) 882-9287 – Facsimile  
[mstafford@sjlawcorp.com](mailto:mstafford@sjlawcorp.com)  
5 [gnemiroff@sjlawcorp.com](mailto:gnemiroff@sjlawcorp.com)

6 Attorneys for Plaintiffs

7  
8 UNITED STATES DISTRICT COURT  
9 FOR THE NORTHERN DISTRICT OF CALIFORNIA

Case No.:

**COMPLAINT**

11 BOARDS OF TRUSTEES OF THE SHEET  
METAL WORKERS PENSION TRUST OF  
12 NORTHERN CALIFORNIA;

13 SHEET METAL WORKERS LOCAL 104  
14 HEALTH CARE TRUST;

15 SHEET METAL WORKERS LOCAL 104  
16 SUPPLEMENTAL PENSION FUND;

17 SHEET METAL WORKERS LOCAL 104  
VACATION-HOLIDAY SAVINGS FUND;

18 SHEET METAL WORKERS LOCAL 104 AND  
19 BAY AREA INDUSTRY TRAINING FUND;

20 RICK WERNER and SEAN O'DONOGHUE,  
21 Trustees; and

22 SHEET METAL WORKERS  
INTERNATIONAL ASSOCIATION LOCAL  
23 UNION 104,

24  
25 Plaintiffs,

26 v.

27 JOSHUA WAYNE ARELLANO dba JIM'S AIR  
SYSTEMS, a sole proprietorship.

28 Defendant.

1 Parties

2 1. The Sheet Metal Workers Pension Trust of Northern California, Sheet Metal  
3 Workers Local 104 Health Care Trust, Sheet Metal Workers Local 104 Supplemental Pension  
4 Fund, Sheet Metal Workers Local 104 Vacation-Holiday Savings Fund, and Sheet Metal Workers  
5 Local 104 And Bay Area Industry Training Fund, are employee benefit plans as defined in the  
6 Employee Retirement Income Security Act of 1974 ("ERISA") § 3(3), 29 U.S.C. § 1002(3).  
7 Plaintiffs Boards of Trustees are the named fiduciaries of Plaintiffs' Trust Funds under ERISA  
8 §402(a), 29 U.S.C. §1002(a). Plaintiffs Rick Werner and Sean O'Donoghue are Trustees of the  
9 Trust Funds with authority to act on behalf of all Trustees. Plaintiffs Board of Trustees of the Sheet  
10 Metal Workers Pension Trust are authorized to bring suit and collect monies for all Plaintiffs,  
11 including all other funds to which Defendants are obligated to contribute under the Bargaining  
12 Agreements described below. These employee benefit plans and their fiduciaries are together  
13 referred to herein as "ERISA Plaintiffs" or "Plaintiffs".

14 2. Sheet Metal Workers International Association Local Union 104 (the "Union") is a  
15 labor organization as defined in § 2(5) of the National Labor Relations Act ("NLRA"), 29 U.S.C.  
16 §152(5), and is represented by counsel herein for the limited purpose of collecting union dues owing  
17 as part of the subject contribution claims of Plaintiffs, and not for any other cause of action. The  
18 Union expressly reserves its rights to pursue any other cause of action on its own behalf.

19 3. Joshua Wayne Arellano dba Jim's Air Systems ("Defendant") is a sole  
20 proprietorship, and is an employer by virtue of ERISA § 3(5), 29 U.S.C. § 1002(5), and NLRA §  
21 2(2), 29 U.S.C. § 152(2).

22 Jurisdiction

23 4. Jurisdiction exists in this Court over the claims asserted by ERISA Plaintiffs by  
24 virtue of ERISA § 502, 29 U.S.C. § 1132, in that ERISA Plaintiffs seek to enforce the provisions of  
25 ERISA and the terms of their plans, seek to enjoin the acts and practices which violate ERISA, seek  
26 equitable relief to redress such violations, and seek all other appropriate relief under ERISA.

27 5. Jurisdiction exists in this Court over all the claims by virtue of the Labor  
28 Management Relations Act ("LMRA") § 301, 29 U.S.C. § 185, in that Plaintiffs seek to enforce the



1 information and belief, Defendant entered into both the Project Labor Agreement between Health  
2 Services Department for Contra Costa County and the Signatory Contra Costa County Building  
3 Construction Trade Unions for the Martinez Wellness Center Project, and the Sheet Metal Workers'  
4 Local Union No. 104 and Bay Area Industry Training Fund Apprenticeship Subscription  
5 Agreement for the same project ("Bargaining Agreements").

6 11. Upon information and belief, Defendant entered into and/or performed work as a  
7 subcontractor of W. A. Thomas Co. on the Project Labor Agreement between Health Services  
8 Department for Contra Costa County and the Signatory Contra Costa County Building Construction  
9 Trade Unions for the New Crisis Residential Facility Project.

10 12. The Bargaining Agreements, which incorporate the terms of the Trust Agreements  
11 establishing the Trust Funds ("Trust Agreements"), require Defendant to make payment of  
12 employer contributions to Plaintiffs' Trust Funds, to the union for union dues, and to the other plans  
13 more fully described in the Bargaining Agreement and the Plan Documents of the ERISA Trusts.  
14 ERISA Plaintiffs are third-party beneficiaries of the Bargaining Agreement.

15 13. Under the terms of the Bargaining Agreements, and the Trust Agreements  
16 incorporated therein, Defendant is required to pay certain contributions to: the Sheet Metal Workers  
17 National Pension Plan, International Training Institute, National Energy Management Institute  
18 Committee, Contractor Association Industry Fund, Sheet Metal Workers Local 104 Health Care  
19 Trust, Sheet Metal Workers Local 104 Supplemental Health Care Plan, Sheet Metal Workers Local  
20 104 Union Dues Check-Off, Sheet Metal Occupational Health Institute Trust, and the SMACNA  
21 Industry Fund (collectively referred to herein as the "Bargained Plans"). Plaintiffs' Boards of  
22 Trustees have been authorized to collect and distribute monies due to the Bargained Plans under the  
23 Bargaining Agreements and Trust Agreements.

24 14. Under the Bargaining Agreement, and the Trust Agreements incorporated therein,  
25 Defendant is required to regularly pay to ERISA Plaintiffs, the Bargained Plans, and the Union,  
26 certain sums of money, the amounts of which are determined by the hours worked by Defendant's  
27 employees. Contributions are due on the twenty-second (22<sup>nd</sup>) day of the month following the  
28 month during which hours were worked, and are considered delinquent if not received by that day.

Also under the terms of the Bargaining Agreement, and the Trust Agreements incorporated therein, Defendant is required to pay liquidated damages for each delinquent contribution payment, and interest on unpaid contributions from the delinquent date until paid, at the rates set by the Bargaining Agreement and Trust Agreements. Finally, the Bargaining Agreement and the Trust Agreements require Defendant to reimburse Plaintiffs for attorneys' fees and costs incurred in relation to the collection of Defendant's delinquent contributions.

15. The Bargaining and Trust Agreements further require Defendant to maintain time records or time cards, and to permit an authorized Trust Fund representative to examine such records of Defendant as is necessary to determine whether Defendant has made full payment of all sums owed to ERISA Plaintiffs. Should an audit of Defendant's records reveal Defendant has failed to provide full and prompt payment of all sums due to Plaintiffs, Defendant must reimburse Plaintiffs for the amounts due, including audit fees, in addition to any other obligations pursuant to the Bargaining and Trust Agreements.

#### Factual Allegations

16. Defendant has failed and refused to comply with an audit of its payroll records for the period from January 1, 2013 through December 31, 2015.

17. Plaintiffs are also entitled to recover any and all contributions, and all liquidated damages and interest on delinquent contributions, found due on timecards, further audit, or otherwise, including estimated contributions for any months Defendant failed to report to Plaintiffs, through the time of Judgment. Plaintiffs reserve the right to conduct a further audit to determine whether there are any additional amounts due from Defendant.

#### **FIRST CAUSE OF ACTION For Audit Compliance, Payment of Delinquent Contributions, Interest, Liquidated Damages, Attorneys' Fees and Costs Against Defendant**

18. Plaintiffs re-allege and incorporate by reference paragraphs 1 through 17, above.

19. Defendant has a contractual duty to timely pay the required contributions to Plaintiffs and the Bargained Plans, and to timely pay dues to the Union, pursuant to the Bargaining Agreement and Trust Agreements. Defendant also has a contractual duty under the Bargaining Agreement, and Trust Agreements incorporated therein, to permit an audit of its records to

1 determine whether it is making full and prompt payment of all sums required to be paid by it to  
2 Plaintiffs, and to pay Plaintiffs all amounts found due as a result of an audit, including audit fees.

3 20. In addition, Defendant has a statutory duty to timely make the required payments to  
4 Plaintiffs under ERISA § 515, 29 U.S.C. § 1145, and LMRA § 301(a).

5 21. By refusing to permit an audit of its records, Defendant breached the Bargaining  
6 Agreement and is in violation of ERISA § 515, 29 U.S.C. § 1145, and LMRA § 301(a).

7 22. Defendant's failure and refusal to permit the audit and pay the required contributions  
8 was at all times, and still is, willful. Defendant continues to breach the Bargaining Agreement, and  
9 incorporated Trust Agreements, by failing to permit the audit and pay all amounts owed as alleged.  
10 Said refusal is unjustified and done with knowledge and intent.

11 23. ERISA Plaintiffs are without an adequate remedy at law and will suffer continuing  
12 and irreparable injury, loss and damage unless Defendant is ordered specifically to perform all  
13 obligations required on Defendant's part to be performed under ERISA, 29 U.S.C. §§ 1101-1381,  
14 the LMRA, 29 U.S.C. §§ 141-197, and the Bargaining and Trust Agreements, and are restrained  
15 from continuing to refuse to perform as required thereunder.

16 24. This Court is authorized to issue injunctive relief based on the traditional standard.  
17 As set forth above, ERISA Plaintiffs have a strong likelihood of success on the merits. There is the  
18 possibility that ERISA Plaintiffs' Trust Funds and their participants will suffer irreparable injuries.  
19 The balance of hardships and advancement of public interest favor ERISA Plaintiffs.

20 25. This Complaint does not in any manner relate to statutory withdrawal liability that  
21 may or may not be assessed against Defendant. ERISA Plaintiffs expressly reserve the right to  
22 pursue any such withdrawal liability claims against Defendant as provided by ERISA Plaintiffs'  
23 Plan Documents, Trust Agreements, and the law.

24 Prayer

25 WHEREFORE, Plaintiffs pray as follows:

26 1. For an order,  
27  
28

(a) requiring that Defendant comply with its obligations to Plaintiffs under the terms of the Bargaining Agreements and the Trust Agreements, including permitting an audit of its records as requested by Plaintiffs;

(b) enjoining Defendant from violating the terms of those documents and of ERISA; and

(c) enjoining Defendant from disposing of any assets until said terms have been complied with, and from continuation or operation of Defendant's business until said terms have been complied with.

2. For a judgment against Defendant as follows:

(a) Any unpaid contributions, due at time of Judgment, including those determined as due by audit, timecards, or otherwise, including estimated contributions for any months Defendant fails to report to Plaintiffs pursuant to ERISA § 502(g)(2)(A), 29 U.S.C. § 1132(g)(2)(A);

i. To ERISA Plaintiffs and the Bargained Plans, in accordance with ERISA § 502(g)(2)(A), 29 U.S.C. § 1132(g)(2)(A) and the Bargaining Agreements;

ii. To the Union in accordance with the Bargaining Agreements.

(b) Liquidated damages on all late-paid and unpaid contributions in an amount provided for under the Bargaining and Trust Agreements, and with respect to ERISA Plaintiffs, ERISA § 502(g)(2)(c), 29 U.S.C. § 1132(g)(2)(c).

(c) Interest on all late-paid and unpaid contributions at the rates set in accordance with the Bargaining Agreements, the Trust Agreements, and ERISA § 502(g)(2)(B), 29 U.S.C. § 1132(g)(2)(B).

3. Plaintiffs' reasonable attorneys' fees and costs of this action, including any audit fees, in accordance with ERISA § 502(g)(2)(D) and (E), 29 U.S.C. § 1132(g)(2)(D) and (E); and in accordance with the Bargaining Agreements for all Bargained Plans; and with LMRA § 301, 29 U.S.C. § 185, for all Plaintiffs.

4. That the Court retain jurisdiction of this case pending compliance with its orders.

///

1           5. For such other and further relief as the Court may deem just and proper.

2  
3 Dated: February 15, 2018

SALTZMAN & JOHNSON  
LAW CORPORATION

4  
5 By: \_\_\_\_\_/S/

6 George R. Nemiroff  
7 Attorneys for Plaintiffs  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28